

07 CIV 8576

Pui Chi Cheng (PC-2476)
Attorneys for Defendant LIN
60 E. 42nd Street, Suite 2128
New York, New York 10165
212-557-4040 (O)
212-557-4969
Attorneys for Defendant LIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
LORETTA DISANTO, :
:
Plaintiff, :
:
-against- :
:
CHUN LIN, :
:
Defendants. :

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441**

FILED
U.S. DISTRICT COURT
2007 OCT -3 PM 1:03
S.D. OF N.Y.

-----X

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that Respondent CHUN LIN ("LIN") hereby removes to this Court the action described below:

1. On or about August 2, 2007 a civil proceeding was commenced by Plaintiff LORETTA DISANTO ("Disanto") in the Supreme Court of the State of New York, County of Putnam, Index No. 1858/07 (the "State Court Action").
2. Disanto's Summons and Complaint were left at the doorsteps of LIN's home on or about September 4, 2007. Copies of said Summons and Complaint are annexed hereto as Exhibit A. LIN has not entered an appearance or filed a responsive pleading or any other papers in the State Court Action.

3. The State Court Action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. This action may be removed to this Court by LIN pursuant to 28 U.S.C. § 1441 because it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. Disanto is a citizen of the State of New York, residing at 906 Nutmeg Drive, Carmel, New York 10512.

5. LIN is a citizen of the State of Massachusetts, residing at 4 Teaberry Lane, Andover, MA 01810

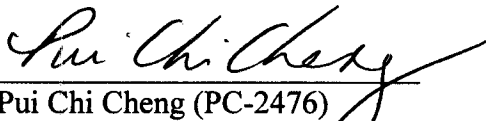
6. According to Disanto's Summons and Complaint, on October 28, 2006, while a operator of a motor vehicle, her vehicle came into collision with the defendant Lin's vehicle. Disanto claims to have sustained personal injuries as a result of same including but not limited to tear of the meniscus requiring arthroscopic knee surgery, elbow injury requiring steroid injections and other injuries which exceed the \$75,000.00 jurisdictional limits. (Plaintiff's medical records are annexed hereto.)

7. This notice has been filed within 30 days from the date upon which LIN received a copy of the initial pleading.

WHEREFORE, Defendant CHUN LIN respectfully requests that this action be removed to this Court.

Dated: New York, New York
October 1, 2007

Law Offices of Cheng & Associates PLLC

By: 
Pui Chi Cheng (PC-2476)
Attorneys for Defendant LIN
60 E. 42nd Street, Suite 2128
New York, New York 10165
212-557-4040 (O)
212-557-4969 (F)

File # 90411-02/spa

STATE OF NEW YORK
SUPREME COURT : COUNTY OF PUTNAM

index # 1858/07

-----X
LORETTA DISANTO,

Plaintiff,

-against-

NOTICE

CHUN LIN,

Defendant.
-----X

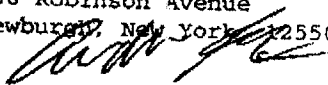
SIR:

PLEASE TAKE NOTICE that pursuant to the provisions of Sections 253 and 254 of the Vehicle and Traffic Law of the State of New York, a copy of the Summons and Verified Complaint in the above-entitled action was served upon the above-named defendant, CHUN LIN, by mailing on August 20, 2007, one copy of such Summons and Verified Complaint to said Secretary of State of New York, addressed to his office in the City of Albany, State of New York, with a fee of TEN (\$10.00) DOLLARS.

AND TAKE FURTHER NOTICE that we are sending you herewith by Certified Mail, Return Receipt Requested, copy of the Summons and Verified Complaint in this Action.

DATED August 20, 2007

JACOBY & MEYERS, LLP
c/o Processing Center
Attorneys for Plaintiffs
Office & P.O. Address
436 Robinson Avenue
Newburgh, New York 12550

BY: 
ANDREW G. FINKELSTEIN, ESQ.

TO: CHUN LIN
Defendant
4 Teaberry Lane
Andover, MA 01810
Cert. #7001 0320 0002 1557 6566

FILE #90411-02/spa

DATE OF FILING: 8/2/07

INDEX #: 1858/07

Plaintiff designates
Putnam County
as the place of trial.

The basis of venue is:
Plaintiff(s) residence.

Plaintiff resides at:
906 Nutmeg Drive
Carmel, New York
County of Putnam.

SUPREME COURT STATE OF NEW YORK
COUNTY OF PUTNAM

-----X
LORETTA DISANTO,

-against-

Plaintiff(s),

SUMMONS

CHUN LIN,

Defendant(s).
-----X

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within -20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
c/o PROCESSING CENTER
436 Robinson Avenue
Newburgh, New York 12550
1-800-890-3090

dated: July 31, 2007.

DEFENDANT'S ADDRESS:
Hawberry Lane
Dover, Massachusetts 01810

File #90411-02/spa

STATE OF NEW YORK
SUPREME COURT : COUNTY OF PUTNAM

-----X
LORETTA DISANTO,

Plaintiff,

-against-

VERIFIED COMPLAINT

CHUN LIN,

Defendant(s).
-----X

Plaintiff, by attorneys, JACOBY & MEYERS, LLP as and for the
Verified Complaint, herein allege(s) the following:

AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, LORETTA DISANTO

1. That at all times hereinafter mentioned, the plaintiff(s) was and still is a resident of the County of Putnam, State of New York.
2. That at all times hereinafter mentioned, upon information and belief, the defendant(s) was and still is a resident of the County of Essex, Commonwealth of Massachusetts.
3. That at all times hereinafter mentioned, upon information and belief, the defendant, CHUN LIN, was the titled owner of a 2004 Mercury motor vehicle, bearing License Plate #72BB33, for the

Commonwealth of Massachusetts.

4. That at all times hereinafter mentioned, upon information and belief, the defendant, CHUN LIN, was the registered owner of a 2004 Mercury motor vehicle, bearing License Plate #72BB33, for the Commonwealth of Massachusetts.

5. That at all times hereinafter mentioned, upon information and belief, the defendant, CHUN LIN, was the lessee of a 2004 Mercury motor vehicle, bearing License Plate #72BB33, for the Commonwealth of Massachusetts.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, CHUN LIN, was the operator of the aforesaid motor vehicle, bearing License Plate #72BB33, for the Commonwealth of Massachusetts.

7. That at all times hereinafter mentioned, the plaintiff, LORETTA DISANTO, was the owner and operator of a 2005 HYUNDAI motor vehicle, bearing License Plate #DEK9829, for the State of New York.

8. That at all times hereinafter mentioned, I-84 Eastbound, at mile marker #68.6, located in Town of Southeast, County of Putnam, State of New York, was and still is a public highway and thoroughfare and was the situs of the accident herein.

9. That on or about the 28th day of October, 2006, the aforementioned motor vehicles were in contact with each other.

10. The accident and resulting injuries were caused by the

negligent, wanton, reckless and careless acts of the defendant(s) herein.

11. That the defendant was negligent, wanton, reckless and careless in allowing, causing, and/or permitting his motor vehicle to come into contact with the motor vehicle of the plaintiff herein; in failing to properly keep, control and maintain the motor vehicle so as to prevent the accident herein; in failing to keep the motor vehicle under proper control; in failing to operate the motor vehicle in a manner and at a speed that was reasonable and proper under the prevailing traffic conditions; in failing to properly operate the braking and acceleration devices of the motor vehicle under the circumstances of the roadway where the accident occurred; in failing to keep a proper lookout; in failing to stop and/or slow down; in acting with reckless disregard for the safety of others; in failing to keep alert and attentive; in failing to properly apply brakes; in failing to avoid a head-on collision; in failing to stay in the proper lane of travel; in failing to sound horn; and the defendant was in other ways negligent, wanton, reckless and careless.

12. The limited liability provisions of C.P.L.R. 1601 do not apply pursuant to C.P.L.R. 1602(6) on the grounds that the defendants liability is based upon his use, operation and ownership of a motor vehicle or motorcycle and C.P.L.R. 1602(7) on the grounds that defendant acted with reckless disregard for the safety of others

including the plaintiff herein.

13. That by reason of the foregoing, this plaintiff was caused to sustain severe and serious personal injuries to her mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. Further, this plaintiff was caused to expend and become obligated for diverse sums of money as a result of this accident; the plaintiff further was caused to lose substantial periods of time from her normal vocation, and upon information and belief, may continue in that way into the future and suffer similar losses.

14. That this plaintiff sustained a serious injury, as defined in Subdivision (d) of Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic economic loss, as defined in Subdivision (a) of Section 5102 of the Insurance Law of the State of New York.

15. That by reason of the foregoing, this plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter.

WHEREFORE, plaintiff demands judgment against the defendant(s)
as follows:

(1) A sum which exceeds the jurisdictional limits of all lower
courts which the jury would find to be fair, adequate and just in the
First Cause of Action, together with the costs and disbursements of
this Action.

Yours, etc.,

JACOBY & MEYERS, LLP
Attorneys for Plaintiff(s)
Office & P.O. Address
C/O Processing Center
436 Robinson Avenue
Newburgh, New York 12550

BY: 

ANDREW G. FINKELSTEIN, ESQ.

TO: CHUN LIN
Defendant
4 Teaberry Lane
Andover, Massachusetts 01810

STATE OF NEW YORK : COUNTY OF ORANGE

SS:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and say that:

I am the attorney of record, or of counsel with the attorney(s) of record, for the plaintiff(s). I have read the annexed Verified Complaint, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Facts and information contained in deponent's file. The reason I make this affirmation instead of the plaintiff is because the plaintiff resides outside of county where deponent maintains his office.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: July 31, 2007.



ANDREW G. FINKELSTEIN, ESQ.

APPLICATION FOR MOTOR VEHICLE NO-FAULT BENEFITS

NEW YORK MOTOR VEHICLE NO-FAULT INSURANCE LAW

DATE 11/01/2006		POLICYHOLDER Loretta Disanto	
POLICY NUMBER OCFF95-979930034-101 -1		DATE OF ACCIDENT 10/28/2006	CLAIM NUMBER 263-PP-URH6557-P
1. YOUR NAME Loretta Disanto		2. PHONE NOS. HOME 845 228-1938	BUSINESS 203-591-2712
3. YOUR ADDRESS (NO., STREET, CITY OR TOWN, STATE AND ZIP CODE) 906 Nutmeg Dr. Carmel, NY 10512		4. DATE OF BIRTH 10-1-59	5. SOCIAL SECURITY NO. 109-56-4661
6. DATE AND TIME OF ACCIDENT 10/28/06 2:10 P.M.		7. PLACE OF ACCIDENT (STREET, CITY OR TOWN AND STATE) I-84 (highway) Brewster, NY	
8. BRIEF DESCRIPTION OF ACCIDENT Traveling 84 east - moved to left lane for passing traffic. At exit ramp from I-84, car on exit ramp coming onto I-84 - spun around to right, then spun around and crossed 2 lanes. No. 1 lane hit me from behind.			
9. DESCRIBE YOUR INJURY extreme bruising on neck, rt. side of chest, stomach, both knees, right arm. Pain in both arms, ribs, knees, elbows.			
10. IDENTITY OF VEHICLE YOU OCCUPIED OR OPERATED AT THE TIME OF THE ACCIDENT		11. WERE YOU THE DRIVER OF THE MOTOR VEHICLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
OWNER'S NAME Loretta Disanto	MAKE Hyundai	YEAR 2005	WERE YOU A PASSENGER IN THE MOTOR VEHICLE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
THIS VEHICLE WAS: <input checked="" type="checkbox"/> A BUS OR SCHOOL BUS <input type="checkbox"/> A TRUCK, OR <input type="checkbox"/> A MOTORCYCLE		WERE YOU A PEDESTRIAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
12. WERE YOU TREATED BY A DOCTOR(S) OR OTHER PERSON(S) FURNISHING HEALTH SERVICES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		WERE YOU A MEMBER OF OUR POLICYHOLDER'S HOUSEHOLD? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME AND ADDRESS OF SUCH DOCTOR(S) OR PERSON(S) Stonelaigh Ave. Carmel, NY Putnam Hospital ER - Valerie Figuerca, DR. Dan Stephens, DR. Nilda Herrera		DO YOU OR A RELATIVE WITH WHOM YOU RESIDE OWN A MOTOR VEHICLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
13. IF YOU WERE TREATED IN A HOSPITAL, WERE YOU: <input type="checkbox"/> AN IN PATIENT? <input type="checkbox"/> AN OUT PATIENT?		DATE OF ADMISSION 10/30/06	
14. AMOUNT OF HEALTH BILLS TO DATE \$		15. WILL YOU HAVE MORE HEALTH TREATMENT(S)? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO 955.50	
17. DID YOU LOSE TIME FROM WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		16. AT THE TIME OF YOUR ACCIDENT, WERE YOU IN THE COURSE OF YOUR EMPLOYMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT OF TIME LOST FROM WORK: 2 weeks		18. WHAT ARE YOUR AVERAGE WEEKLY EARNINGS? \$ 955.50 (take home)	
19. WERE YOU RECEIVING UNEMPLOYMENT BENEFITS AT THE TIME OF THE ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NUMBER OF DAYS YOU WORK PER WEEK: 5	
		NUMBER OF HOURS YOU WORK PER DAY: 8	

* CONTINUATION ON NEXT PAGE *

PHC
Putnam Hospital Center
Stoneleigh Avenue
Carmel, NY 10512

Department of Diagnostic Radiology
(845) 279-5711 Ext: 2775

Patient: DISANTO, LORETTA
Med. Rec.#: 221848
DOB: 10/01/1959 Age: 47Y
Location: OUTPATIENT MR-
Requesting MD: Nilo Herrera M.D.
Account #: 1838102
Ord#: 90004
Date of study: 12/20/2006

Final Report

WRT

EXAMINATION:

MRI 9205 - MRI LE JT RT WO Dec 20 2006 ACC# 2034735

CHIEF COMPLAINT: Right knee pain. Patient reports previous knee injury.

PROCEDURE:

MR examination of the right knee is limited by the patient's body habitus. The patient was too large for the extremity coil and so the head coil was used.

There is a defect in the inferior articular surface of the posterior horn of the medial meniscus near the medial margin, see sagittal proton density weighted image #9. The posterior horn of the medial meniscus is smaller than the anterior horn. The medial meniscus appears diminutive. The lateral meniscus is intact. The anterior cruciate ligament and posterior cruciate ligament are intact. There is edema superficial to the medial collateral ligament consistent with a sprain. The medial and lateral collateral ligaments are intact.

There is moderate degenerative change with small osteophytes on the medial and lateral femoral condyles and the medial tibial plateau.

There is severe chondromalacia patella with full thickness cartilage loss of the lateral facet. There is a prominent osteophyte in the anterior margin of the lateral femoral condyle which comes in close proximity to the patellar articular cartilage. There is a moderate sized joint effusion. There is a small amount of edema superficial to the patella consistent with a contusion. There is no evidence of bone marrow edema or fracture.

IMPRESSION:

Degenerative change in the medial, lateral and patellofemoral compartment with severe chondromalacia patella of the lateral facet. Moderate sized joint effusion.

Tear of the inferior articular surface of the posterior horn of the medial meniscus with a small meniscus is most consistent with a degenerative tear.

Edema superficial to the patella is consistent with contusion.

Examination Interpreted by: Adam Welber M.D.

Document Authenticated by: Adam Welber M.D. Dec 22 2006 9:59A

RECEIVED - MRI 12/20/06

COPY

PHC

Putnam Hospital Center
Stoneleigh Avenue
Carmel, NY 10512

Patient: DISANTO LORETTA
Med Rec#: 221848
Location: AS
Surgeon: Douglas Fauser, M.D.
Assistants: *none*

Operative Report

Date of Operation: 01/25/2007

CC:

1/30/07

PREOPERATIVE DIAGNOSIS: Osteoarthritis of right knee with degenerative medial meniscal tear.

POSTOPERATIVE DIAGNOSIS: Osteoarthritis of right knee with degenerative medial meniscal tear with lateral meniscal tear and reactive synovitis with multiple intraarticular osteocartilaginous loose bodies.

OPERATION: Operative arthroscopy of right knee, partial medial and partial lateral meniscectomy, abrasion chondroplasty of all 3 compartments with removal of intraarticular osteocartilaginous loose bodies with major synovectomy.

SURGEON: Douglas Fauser, MD.

ANESTHESIOLOGIST: Eric Diana, MD.

ANESTHESIA: Spinal.

FINDINGS: Grade IV chondral changes involving the patellofemoral joint were noted with multiple intraarticular osteocartilaginous loose bodies which were removed utilizing the 2 standard arthroscopic portals. Grade III chondral changes are noted at the tibial femoral articulation both medially and laterally with unstable flaps of hyaline cartilage requiring debridement of articular cartilage back to stable hyaline cartilaginous remnants. We encountered posterior horn medial meniscal tear and a circumferential degenerative tear involving the lateral meniscus. The medial meniscal tear was repairable, and both were trimmed back to stable medial and lateral meniscal remnants as evidenced by direct probing. At the conclusion of procedure, all unstable flaps of hyaline cartilage were debrided from the knee, all meniscal remnants were fully stable to direct probing, and all reactive synovitis was resected.

A time-out was called prior to the induction of anesthesia. The patient's identity was confirmed. The intended procedure was

DISANTO, LORETTA
221848

reviewed and the site of surgery was confirmed. All necessary equipment for the intended procedure was available. The operation was commenced.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room. After administration of the spinal anesthesia, the right lower extremity was prepped and draped in the usual manner for a procedure to be done on the right knee. Prepping consisted of Betadine scrub and then Betadine paint. After adequate anesthesia was checked for, a lateral parapatellar tendon portal was created with a #11 blade. A 30-degree arthroscope was introduced into the knee. A diagnostic arthroscopy was carried out with the findings as previously dictated. The optimal position for the medial parapatellar tendon portal was then delineated with a spine needle, created with a #11 blade, and through this portal, a blunt probe was inserted.

A medial meniscal tear was diagnosed. It was trimmed with a duckbill upbiting basket and a curved incisor blade and reprobbed and deemed to be stable. Chondroplasty of the weightbearing portion of the medial femoral condyle was carried out in a conservative fashion removing all unstable flaps of hyaline cartilage utilizing the curved incisor blade. Synovectomy was then carried out of the medial compartment back to noninflamed synovial tissue. The ACL and PCL were inspected and probed and deemed to be normal. Lateral compartment had a circumferential tear involving the lateral meniscus. It was trimmed with a straight duckling type basket, a duckbill upbiting basket, and a curved incisor blade. Chondroplasty of the lateral tibial plateau was carried out back to stable hyaline cartilaginous remnants. Synovectomy was completed of the lateral compartment due to synovitis here.

Attention was directed to the patellofemoral joint. Multiple osteocartilaginous loose bodies were grasped with pituitary rongeur and removed from the patellofemoral joint. Retropatellar chondroplasty as well as a femoral trochlear chondroplasty was carried out utilizing the motorized shaving system. A synovectomy was then embarked upon utilizing the medial and lateral parapatellar tendon portals for access. The suprapatellar pouch, medial and lateral gutters, and anterior chamber were completely synovectomized down to normal-appearing synovial tissue.

The knee was then irrigated out with normal sterile saline, following which time for correct sponge count, closure was achieved. We closed each portal with vertical mattress sutures of 4-0 nylon material. Then, 20 mL of 0.25% Marcaine was instilled into the knee. A compressive Jones dressing was applied.

DISANTO, LORETTA
221848

The patient was then transported to the recovery room in stable condition. She tolerated the procedure well. Estimated blood loss minimal. Sponge count was correct. This was a clean case. No complications.

Douglas Fauser, M.D.

DF/OSL/227704/jg/01/27/2007 07:09:03
D: 01/25/2007 14:05:03 T: 01/27/2007 07:09:03
PHC Job#: 28581/OS: Job# 773427/Doc ID: 795307

FINAL SURGICAL PATHOLOGY REPORT for DISANTO, LORETTA (S07-478)

PUTNAM HOSPITAL CENTER
DEPARTMENT OF PATHOLOGY
Stoneleigh Avenue, Carmel, NY 10512
Tel: 845-279-5711 ext 3243 Fax 845-279-2513
Vinita Agarwal MD, Director of Pathology
SURGICAL PATHOLOGY REPORT

Patient: DISANTO, LORETTA

ACCESSION #: S07-478

DOB: 10 01 1959 Sex: F

Med Rec #: 000221848

Submitting Phys : Douglas Fauser, MD

Collected: 01 25 2007

Acct #: 1842161

Copies To:

Received: 01 25 2007

Location: ASU

Reported: 01 29 2007

Read at PHC; tissue processed and slides prepared at: Bioreference Labs, 481 Edward H Ross Drive, Elmwood Park, NJ 07407.

CLINICAL INFORMATION

Right knee meniscal tear.

SOURCE

Arthroscopic knee shavings, right.

FINAL MICROSCOPIC DIAGNOSIS

Arthroscopic knee shavings, right.

FRAGMENTS OF DEGENERATING FIBROCARILAGE CONSISTENT WITH MENISCAL TEAR.
(kr)

MARY FRANCES KUSIOR MD

Electronically signed

(Case signed 01 29 2007)

GROSS DESCRIPTION

Received in formalin, specimen consists of one aspirator sac containing multiple fragments of grey-white to yellow, soft tissue measuring 6 cc. Representative sections submitted in one cassette.

VA/kr

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